

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
INTERNATIONAL COMPETITIVE MULTI-SERVICE
COMMERCIAL CONTRACTS

Docket No. MC2020-252

COMPETITIVE PRODUCT PRICES
INTERNATIONAL COMPETITIVE MULTI-SERVICE
COMMERCIAL CONTRACTS 1 (MC2020-252)

Docket No. CP2020-282

**RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
CHAIRMAN'S INFORMATION REQUEST NO. 1**
(October 20, 2020)

The United States Postal Service (Postal Service) hereby provides its response to Chairman's Information Request No. 1, issued on October 8, 2020, in the dockets listed above.¹ A response was due no later than October 15, 2020, but the Commission granted the Postal Service's motion for extension of time until October 20, 2020, to file a response.²

¹ Chairman's Information Request No. 1, Docket Nos. MC2020-252 and CP2080-282, October 8, 2020.

² PRC Order No. 5722, Order Granting Motion for Extension of Time, Docket Nos. MC2020-252 and CP2020-282, October 16, 2020.

Respectfully submitted,

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1. In its Request, the Postal Service references Order No. 43, in which the Commission stated that “[i]n the future, it may be appropriate to group functionally equivalent negotiated service agreements [(NSAs)] as a single product if it can be shown that they have similar cost and market characteristics.”³ The Postal Service also references the Global Expedited Package Services—Non-Published Rates (GEPS-NPR) product, in which the Commission has grouped NSAs for Express Mail International and Priority Mail International through “business rules to ensure that the specific, potential rates set forth in a standard [GEPS-NPR] contract template are established and previously reviewed by the Commission.” Request at 4. The Postal Service notes that these rules “ensure that such [GEPS-NPR] agreements will, as a product, comply with all statutory and regulatory requirements for cost-coverage and contribution to institutional costs and that they will not be subsidized by market-dominant products.” *Id.*
 - a. Please explain how agreements with customized contractual terms and any combination of eight potential service offerings, considered for inclusion in the ICMSCC 1 product, are functionally equivalent to each other. Please focus the explanation on the shared cost and market characteristics of these agreements.
 - b. Please confirm that the proposed ICMSCC 1 product would not be subject to the business rules that ensure statutory and regulatory compliance for GEPS-NPR agreements, including a template agreement that offers identical services and prices within a pre-approved range. If confirmed, please explain how statutory and regulatory compliance can be ensured without these restrictions.

RESPONSE:

- a. In the Postal Service’s initial filing in this docket, the Postal Service proposed creating the ICMSCC 1 product to establish “filing conventions and practices to eliminate unnecessary and repetitive workload, which would expedite the processing” of customized outbound international negotiated service agreements.⁴

³ Request [of the United States Postal Service to Add International Competitive Multi-Service Commercial Contracts 1 to the Competitive Products List and Application for Non-Public Treatment of Materials Filed Under Seal, September 18, 2020 (Request)] at 3; see Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 58 (Order No. 43).

⁴ Request at 4.

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However, the Postal Service did not intend for a separate functional equivalency analyses⁵ to be conducted on each agreement filed for inclusion in the ICMSCC 1 product.

Using functional equivalency analysis to group outbound international NSAs by specific contract types, instead of filing them all within a single ICMSCC 1 product, is overly cumbersome, offers little efficacy or efficiency, and is not essential for the exercise at hand. The exercise at hand is aimed at (1) moving away from a contract-by-contract docket numbering system, which leads to queuing exercises and unnecessary delays, that could be easily replaced with a serial numbering system, (2) adopting measures to streamline process flows and eliminate duplicative and unnecessary work, and (3) reducing cycle time so that the Postal Service may be able to offer a faster more predictable start date to customers, and thereby serve them better. The Postal Service believes that pursuing these objectives is in the best interest not only of the Postal Service, but also the Postal Regulatory Commission (Commission), and that the Commission can continue to meet its statutory and regulatory requirements while pursuing such objectives.

As background, the concept of functional equivalence for international negotiated service agreements (NSAs) was introduced by the Commission in Order No. 85, in June 2008. In that order, the Commission

⁵ Concerning functional equivalency and international negotiated service agreements, see PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9, and CP2008-10, June 27, 2008, at 7-9.

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directed that “[t]he contracts submitted in Docket Nos. CP2008-9 and CP2008-10 ... be added to the competitive product list as one product under Negotiated Service Agreements, Outbound International as Global Plus Contracts, Global Plus 1 (CP2008-9 and CP2008-10).”⁶ The concept of functional equivalency was then incorporated into filing and review processes for a number of international NSA contract types. When Order No. 85 was issued, the Postal Service had filed, and the Commission had reviewed, only a few international NSAs.

Twelve years later, the Postal Service has filed several hundred customized (non-NPR) international NSAs, and thus the need for detailed functional equivalency analyses of each individual contract does not seem to be aimed at providing any tangible regulatory benefit to the Postal Service and the Commission, in the processing of customized international NSAs.

If the Commission is concerned about retaining to some extent the concept of functional equivalence, at a macro level, the Commission, as part of its order in this docket, could conclude that all outbound customized international NSAs that include any combination of the products and services listed in the “menu” in proposed MCS section 2510.22 are functionally equivalent, and therefore should be included in the ICMSCC 1 product. Any outbound international NSA that includes any combination of the products and services listed in the “menu” in proposed

⁶ *Id.* at 11.

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MCS section 2510.22 would provide outbound carriage, and in some cases ancillary services, in combination with host package pieces. The Commission has, moreover, already applied fairly broad standards for functional equivalence in the context of both bilateral and multilateral inbound NSAs, which cover the gamut of inbound services that are the logical corollary of all USPS outbound services. If the Commission believes that functional equivalence is an essential component of time-saving filing conventions, then it could draw on its experience with inbound international NSAs, although the Postal Service believes the exercise is unnecessary for the types of process improvements sought here.

- b. Confirmed. Statutory and regulatory compliance would be ensured according to the same practices employed for non-GEPS-NPR international NSAs over the last few years.

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2. Please explain whether the agreements that the Postal Service seeks to file within the ICMSCC 1 product could be filed, using the proposed streamlined review process, under existing and/or new products that each contain the same combination of the services currently included in the Competitive product list,⁷ in order to achieve functional equivalency. Based on the Postal Service's experience with outbound international NSAs, please identify how many separate products would be necessary to capture past combinations of the services offered to customers shipping internationally.

RESPONSE:

Following up on the response to question 1, the intent of the Postal Service was to establish filing conventions and practices to eliminate unnecessary and repetitive workload, not only for the Postal Service, but also for the Commission. These conventions and practices would expedite the processing of the numerous customized outbound international negotiated service agreements that the Postal Service anticipates entering into in the future.

In the Postal Service's initial request in this docket, the Postal Service proposed "simplifying the sequential, numbered docketing system by assigning a serial number to each contract filed" in the ICMSCC 1 product, "similar to the serial numbers assigned to GEPS-NPR contracts," noting that "[d]oing so would enable the Postal Service to avoid the complexities posed by the Commission's docket numbering process, thereby promoting greater predictability and speed to market."⁸

⁷ Services currently included in the Competitive product list and available to outbound international NSAs include: Global Express Guaranteed, Priority Mail Express International, Priority Mail International, First-Class Package International Service, International Priority Airmail, International Surface Air Lift, Commercial ePacket, and Destination Country Duty and Taxes Chargeback Service. [Request] at 13.

⁸ Request at 11-12.

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The current practice of establishing separate international NSA products based on the combination of products and services included in each international NSA poses difficulties for the Postal Service, as explained in the discussion of the current sequential numbered docketing system on pages 9 to 12 of the Postal Service's request. For the ICMSCC 1 product, the Postal Service plans to implement a serial number system for agreements. The serial number system could incorporate intelligent nomenclature so that the serial number for each contract to be included in the product would identify some of the key aspects included in each contract, based on the "menu" of products and services set forth in proposed MCS section 2510.22.⁹

Thus, in the Postal Service's opinion, all that would be necessary would be to verify that each agreement to be included in the ICMSCC 1 product falls within the scope of contracts set forth in proposed MCS section 2510.22. Performing additional functional equivalence analyses of agreements to be included in the ICMSCC 1 product would not be necessary.

The use of serial numbers instead of the current sequential numbered docketing system would avoid many of the difficulties the Postal Service has encountered with the current sequential numbered docketing system.¹⁰ Again, the

⁹ For example, an "R" might be incorporated in serial numbers for reseller contracts.

¹⁰ For example, as noted on page 10 of the Request, "if a complication with any particular planned filing in a new docket arises during the course of the day, and the references to docket numbers in some filings cannot be renumbered in time to avoid a sequential gap in the docket numbers used for filings that day, certain agreements may not be filed that day. This process thus considerably complicates the filing of multiple agreements on a single day. If a gap in the sequence of assigned docket numbers used for a particular day occurs, then the PRC's docketing system is disrupted, and all of the agreements that have assigned docket numbers after the gap cannot be filed until the unused docket number that is causing the gap has been used. This can result in filings being completed one business day later than they might have occurred." Request at 10.

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use of simplified docketing and the use of serial numbering would go a long way towards streamlining filing practices and enable the Postal Service to stage filings in advance without having to wait for each docket number to be assigned and listed on the daily listing.

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3. Please confirm that the Postal Service does not view the underlying agreements that would comprise the ICMSCC 1 product as requiring a “rate [or] class decision[s]” subject to 39 U.S.C. § 3632(b)(3).
- a. If confirmed, please explain why these customized agreements with differing service offerings, costs, and prices do not require a “rate or class decision” under 39 U.S.C. § 3632(b)(3).
 - b. If not confirmed, please explain how the proposed review period of 5 business days comports with 39 U.S.C. § 3632(b)(3).

RESPONSE:

- a. Not confirmed. Section 3632(b)(3) states the following.

(3) Rates or classes not of general applicability.-In the case of rates or classes not of general applicability in the Nation as a whole or in any substantial region of the Nation, the Governors shall cause each rate and class decision under this section and the record of the proceedings in connection with such decision to be filed with the Postal Regulatory Commission by such date before the effective date of any new rates or classes as the Governors consider appropriate, but in no case less than 15 days.¹¹

Each agreement filed within the ICMSCC 1 product would not require a “rate or class decision” under 39 U.S.C. § 3632(b)(3) because the products and services offered under each agreement would be among the “menu” of products and services listed in proposed MCS section 2510.22, which Postal Service management was authorized by the Governors to prepare and file at the Commission pursuant to Governors’ Decision No. 19-1. Thus, subsequent requests to include within the ICMSCC 1 product individual contracts that contain specific rates would not require a “rate or

¹¹ 39 U.S.C. § 3632(b)(3).

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class decision" under 39 U.S.C. § 3632(b)(3), just as all other NSAs filed with the Commission do not require a separate Governors' decision.

- c. As an uncodified business rule and as a matter of regulatory discretion, the *proposed* review period of 5 business days comports with 39 U.S.C. § 3632(b)(3) because that section requires filing with the Commission "in no case less than 15 days" "before the effective date of any new rates or classes," but the Commission is not bound to complete its review only after those 15 days. As explained in the initial notice in this docket, there are examples in which the Commission has completed its review of international negotiated service agreements in less than 15 days.¹² Also, as noted in the Postal Service's initial filing in this docket, "[t]he Commission could of course undertake further review, and prevent any given contract filed in the docket from taking effect after the prescribed period has concluded, if the Commission seeks to conduct further inquiries or wishes to opine on the legal sufficiency of the filing or the contract terms."¹³ The Postal Service submits that the Commission could very well conclude its review in a more expedited fashion if it is freed from undertaking unnecessary or repetitive tasks, including, but not limited to, the issuance of a notice and order, as well as the issuance of an order when none is needed if the requisite time period has passed. If the Commission does not believe the five business day review period is

¹² Request at 15.

¹³ Request at 16.

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reasonable, it can devise its own business rules that best suit its needs for this docket, and the Postal Service can adjust to those business rules if suitable and if they serve the overall goal of streamlining procedures and reducing cycle time for customers.

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4. The Postal Services states that the streamlined process would allow it to “place customized outbound international NSAs into effect more rapidly at a reduced cost.” Request at 21. The Postal Service further claims that “[b]ecause the agreements typically have a one-year term, the transaction costs for developing the pricing and filing each agreement as a separate product are substantial as well.” *Id.* Please explain whether the anticipated reduction in transaction costs for the agreements included in the proposed ICMSCC 1 product would result from the streamlined filing and review procedures only or whether the reduction in transaction costs would also be associated with the development of pricing for these agreements. If the latter, please provide details about how prices for the agreements included in the ICMSCC 1 product will be developed and provide financial workpapers for the price development mechanism for the Commission's review.

RESPONSE:

The anticipated reduction in transaction costs for the agreements in the proposed ICMSCC 1 product would result from the streamlined filing and review procedures. The Postal Service was fully expecting to continue to file the same level of supporting financial information with each agreement. The Postal Service does not anticipate a reduction in transaction costs associated with the development of pricing for international NSAs to be included in the ICMSCC 1 product. Please see the response to question 7 regarding financial workpapers.

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5. The Postal Service states that it intends to “continue the use of the ‘NPR’ approach for its contract customers that lend themselves to using standardized terms, who are generally smaller volume customers that do not have a need for customization of terms.” *Id.* at 5 n.11.
- a. Please provide the contract volume that would constitute a “smaller volume” customer.
 - b. Please explain whether the volume referenced in question 5.a. would apply to agreements with any combination of service offerings.
 - c. Please explain which terms of the agreements included in the proposed ICMSCC 1 product will be customized and which terms will be standardized for “smaller volume” customers.

RESPONSE:

- a. There is no specific point at which a customer ceases to be eligible for an NPR agreement; however, our experience indicates that customers seeking customization generally have higher revenue potential than those that are comfortable executing NPR template agreements. That said, our statement should be clarified in this regard; it may be a bit overstated to describe NPR as being confined to “smaller volume” customers. Upon reflection, we note that there is no maximum revenue limitation in MCS section 2510.8 Global Expedited Package Services (GEPS) – Non-Published Rates. MCS section 2510.8.1(c) states:

“c. To qualify for Global Expedited Package Services (GEPS)—Non-Published Rates, a mailer must be capable, on an annualized basis, of paying at least \$50,000.00 for GXG, PMEI, PMI, and FCPIS to the Postal Service under a Global Expedited Package Services (GEPS) – Non-Published Rates agreement.
- b. The Postal Service’s initial filing in this docket included no minimum commitment in proposed MCS section 2510.22. However, given the

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transaction costs involved, it is generally not in the Postal Service's business interests to pursue customized agreements with customers below the current \$50,000.00 threshold used for GEPS-NPR agreements. That said, given the fact that future practices may be influenced by transaction costs, and if those transaction costs are lowered due to the streamlining of procedures, the Postal Service submits that it would be optimal to not indicate a specific revenue threshold in proposed MCS section 2510.22 at this time. This issue could, however, be explored at a later point if it becomes problematic for the Commission.

- c. The Postal Service's initial filing in this docket included a "menu" of products and services listed in proposed MCS section 2510.22, which could be included in ICMSCC 1 contracts. The specific terms, as well as combination of products and services, in various agreements to be included in the proposed ICMSCC 1 product cannot be specifically identified in advance. The Postal Service would continue to offer GEPS-NPR contracts, which are based on a standardized template, and to the extent that there is efficacy in expanding the scope of that approach, the Postal Service would pursue it. It is difficult to make generalizations concerning all customers; however, particularly for larger customers that have a greater need for customized terms, devising a template in advance seems unlikely to yield benefits other than for the customer involved. The benefit of preparing an "NPR" docket also diminish when the number of contracts within its scope are small. The Commission has seen a large

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number of certain types of agreements filed, and the universe of the likely permutations for such agreements are relatively well known at this point.

As mentioned in the response to question 2 above, the Postal Service plans to implement a serial number system for agreements to be included in the ICMSCC 1 product. The serial number system could incorporate intelligent nomenclature so that the serial number for each such contract would identify some of the key aspects included in that contract, based on the "menu" of products and services set forth in proposed MCS section 2510.22.

It is difficult to predict what types of terms may arise in the future, but the likelihood of any major changes seems unlikely absent a classification filing adjusting the menu of products and services listed in proposed MCS section 2510.22.

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6. The Postal Service includes proposed revisions to the Mail Classification Schedule (MCS) in Attachment 3 of the Request. The proposed MCS language does not include mail preparation requirements or annualized minimum volume or revenue commitments. Please explain whether the agreements included in the ICMSCC 1 product would be subject to the above listed requirements in order to qualify for discounted prices and describe the impact of the absence of these requirements on costs incurred by the agreements as well as on transaction costs.

RESPONSE:

Each contract filed for inclusion in the ICMSCC 1 product would include an annualized minimum volume or revenue commitment. As indicated in the response to question 5.b. however, the odds of a customized NSA including an annualized minimum volume or revenue commitment less than the current threshold for GEPS-NPR agreements seems unlikely due to the high transaction costs.

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7. In its Request, the Postal Service lists tasks currently performed by the Commission that would be eliminated from the Commission's review process of the agreements included in the proposed ICMSCC 1 product.¹⁴ These represent administrative tasks. The Postal Service faces challenges associated with the COVID-19 crisis.¹⁵ These challenges have financial and quality implications for outbound international NSAs. The pre-implementation review of financial workpapers for outbound international NSAs is designed to meet the statutory requirement that these agreements cover costs. The following measures would aid in expeditious pre-implementation review by the Commission:

- Link the "settlement charge" workbook to relevant "settlement charge_by_group" workbooks for services included in an agreement
- Link "settlement charge_by_group" workbooks to respective financial workpapers which calculate projected financial performance for services included in an agreement
- If no "settlement charge_by_group" workbook exists (as is currently the case for commercial ePackets), link the "settlement charge" workbook directly to financial workpapers for the affected service included in an agreement
- Provide a summary document which lists the following:
 - Services included in an agreement
 - Total expected volume for the contract period
 - Total expected revenue for the contract period
 - Distribution of volume and weight between services included in an agreement
 - Information on whether the customer will serve as a reseller and, if so, for which services
 - Contract period, including dates, and potential extensions
 - Date of exchange rate used
 - Discount rates negotiated for each service, and whether they are applied to published retail or commercial prices, including implementation date of the prices discount rates are applied to
 - Postage vendor and percentage of revenue sharing
 - Inflation factors used in financial workpapers, for each of mail processing, delivery, other cost, air transportation, and surface transportation
 - Contingency factors used in financial workpapers for each of: international surface transportation, delivery, and other costs
 - Service level for each service included in the agreement

¹⁴ The avoided tasks include: assignment of MC and CP docket numbers for each contract, preparation and issuance of initial scheduling orders, routine Public Representative comments, and final orders concerning each agreement. *Id.* at 15.

¹⁵ See Docket No. ACR2019, Responses of the United States Postal Service to Questions 1-2 of Commission Information Request No. 4, September 23, 2020 (Response to CIR No. 4).

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- All updates to settlement charges included in settlement charge workbook, from the settlement charges used for the most recent serial-numbered agreement
- Overall projected cost coverage for an agreement, as well as cost coverage of each service included in an agreement
- Any expected challenges that can impact projected cost or projected revenue of an agreement, and which are not reflected in the latest fiscal year cost data used in financial workpapers, and are not captured by the inflation and contingency factors

Please discuss whether, and how, the Postal Service would implement these measures, and any others that would aid in the Commission's pre-implementation review of outbound NSAs.

RESPONSE:

The Postal Service can link any settlement files. With respect to the other measures the Commission proposes in this question, some of these measures have the potential to improve the modeling preparation of the Postal Service, while others may add administrative time without necessarily adding value to the models. The Postal Service would prefer to answer this question substantively once the Postal Service has had an opportunity to incorporate as many of the measures listed in this question as possible into its models. The Postal Service will include any changes in its next set of filed models for customized international NSAs. The Postal Service then plans, subsequently, to provide a substantive response to this question in these dockets.

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8. Please explain what measures the Postal Service will take to ensure that the statutory and regulatory requirements for cost coverage, contribution to institutional costs, and cross-subsidization by Market Dominant products of the serial-numbered agreements as well as the ICMSCC 1 product, if approved, are complied with, addressing the following:
- Business rules designed to ensure compliance of each agreement as well as the ICMSCC 1 product, for both “smaller volume” customers and customers with customized contract terms
 - Unit costs, inflation factors, and contingency factors not reflective of cost implications of the COVID-19 or any other future crisis for outbound international NSAs included in the proposed ICMSCC 1 product
 - The short-term nature of outbound international NSAs comprising the proposed ICMSCC 1 product, coupled with the absence of monitoring of their financial performance during the terms these agreements are in effect¹⁶

RESPONSE:

The Postal Service will continue to take the measures that it currently takes to ensure that the statutory and regulatory requirements concerning cost coverage, contribution to institutional costs, and cross-subsidization by Market Dominant products of the serial-numbered agreements in the ICMSCC 1 product, as well as the ICMSCC 1 product, if approved are complied with.

In its response to CIR No. 4, question 1 in the ACR2019 docket, the Postal Service noted that the Annual Compliance review process “provides an opportunity to evaluate performance on a fiscal year basis, and agreements can be evaluated at that juncture, notwithstanding the remaining length of their term, and can be terminated if they fail to cover costs adequately.” Thus, the Postal Service “uses the ACR process as a monitoring tool for NSAs.”¹⁷

¹⁶ See Response to CIR No. 4, question 1.

¹⁷ Responses of the United States Postal Service to Questions 1-2 of Commission Information Request No. 4, Docket No. ACR2019, September 23, 2020, response to question 1.

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Moreover, the Postal Service includes a contingency in the forward-looking financials of each international NSA to help absorb any fluctuations that could not be adequately predicted, such as changes in exchange rates, as well as transportation costs.

As noted in the Postal Service's initial filing in these dockets, "[t]he Commission could of course undertake further review, and prevent any given contract filed in the docket from taking effect after the prescribed period has concluded, if the Commission seeks to conduct further inquiries or wishes to opine on the legal sufficiency of the filing or the contract terms."¹⁸ Currently, the Commission does issue a notice and order concerning each customized outbound international NSA filed, and under the proposed business rules presented in this docket, would only have to do so if there is an issue the Commission wants to explore.

The Postal Service's focus in its initial filing in this docket was on the streamlining of the filing and review process. The Postal Service's initial filing included no major changes to procedures already in place concerning compliance of international negotiated service agreements with statutory and regulatory requirements for cost coverage, contribution to institutional costs, and cross-subsidization by market dominant products.

¹⁸ Request at 16.

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9. Please confirm that the cost coverage for the NSAs included in the proposed ICMSCC 1 product will be reported at an agreement level in future Annual Compliance Review dockets.

RESPONSE:

Confirmed. The Postal Service will report data at the serial number level (in other words, for each individual contract) included in the proposed ICMSCC 1 product, similar to the Postal Service's reporting concerning GEPS-NPR agreements in the ACR2019 docket. As noted above, the Postal Service plans to implement a serial number system for agreements to be included in the ICMSCC 1 product. The serial number system could incorporate intelligent nomenclature so that the serial number for each such contract would identify some of the key aspects included in that contract, based on the "menu" of products and services set forth in proposed MCS section 2510.22.